IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDCITION

WRIT PETITION LODGING NO.690 OF 2007

Shaikh Mohammed Hanif Chandmiya
and Ors. .....Petitioners.

V/s

The Divisional Joint Registrar,
Co-op. Societies and Ors. ....Respondents.

ALONG WITH
NOTICE OF MOTION NO. OF 2007
IN
WRIT PETITION LODGING NO.690 OF 2007

Shaikh Mohammed Hanif Chandmiya
and Ors. .....Petitioners.

V/s

The Divisional Joint Registrar,
Co-operative Societies & Ors. ....Respondents.

And

Suresh Laxman Kamble and Ors. ....Applicants.

ALONGWITH
CHAMBER SUMMONS NO. OF 2007
IN
WRIT PETITION LODGING NO.690 OF 2007

Shaikh Mohammed Hanif Chandmiya
and Ors. .....Petitioners.

V/s

The Divisional Joint Registrar,
Co-operative Societies & Ors. .....Respondents.

And

Chandrakant Narayan Belose
and Ors. .....Applicants.

Mr. A.S. Desai with Mr. R.S. Ghadge for Petitioners.

Mr. Pradeep Jadhav for Respondent Nos. 1 & 4.

Mr. Vijay Mane for Respondent No.3.

Mr. P.K. Dhakephalkar Sr. Advocate, with Mr. S.V. Dhakephalkar for 13 Interveners.

CORAM: V.M. KANADE, J.
DATE : 28TH MARCH, 2007

P.C.:

1. Leave under Rule 143 of the High Court (Original Side) Rules is granted to the applicants to take out Notice of Motion in terms of the draft Notice of motion handed in. Notice of Motion is made returnable forthwith.

2. Leave under Rule 126 of the High Court (Original Side)

Rules is granted to the applicants to take out Chamber Summons in terms of the draft Chamber Summons handed in. Chamber Summons is made returnable forthwith.

3. Heard the learned Counsel appearing for Petitioners, the learned Counsel appearing on behalf of Respondent Nos. 1 & 4 and 3 and the learned Counsel appearing on behalf of the interveners who have taken out Notice of Motion and Chamber Summons.

4. Rule.

5. Rule is made returnable forthwith by consent of the parties.

6. Notice of Motion and Chamber Summons is allowed. Notice of Motion and Chamber Summons is not yet numbered. Office to take appropriate steps for numbering the said Notice of Motion and the Chamber Summons.

7. The interveners are added as party-respondents.

Formal amendment be carried out by Petitioners within a period of two weeks.

8. Petitioners take exception to the meeting which was called by Respondent No.2 for the purpose of changing the symbols which were given to the contesting candidates on the ground that the Respondent No.2 - Returning Officer was not entitled to change the symbols which were already allotted on 21/03/2007 particularly when the election was scheduled to be held on 31/03/2007.

9. It is submitted by the learned Counsel appearing on behalf of Petitioners that the symbols were allotted by Respondent No.2 to all the contesting candidates as per their choice on 21/03/2007 and, thereafter, the candidates had started campaigning for the election and, thereafter, on the basis of complaint which is made by the interveners who have appeared in this Court, the Respondent No.2 - Returning Officer was changing the symbols which was not permissible and was clearly illegal. Petitioners made an urgent application on 26/03/2007 and an ad-interim relief

was granted by this Court in terms of prayer clause (b) and, for the reasons stated in the said interim order, the Respondent No.2 was restrained from taking the meeting which was scheduled to be held on 4.30 P.M on 26/03/2007 for the purpose of changing the symbols of those candidates who had filed their objection.

10. The matter was kept today in order to enable Petitioners to serve other Respondents. Today, the candidates who had filed their objection to the symbols which were allotted to them have intervened in this Petition and their intervention application was allowed and they were heard at length. The election is to the Managing Committee of the Respondent No.3 - Society which is a Slum Rehabilitation Co-operative Housing Society wherein all the members of the Society are essentially living in slum are now sought to be rehabilitated in the said Housing Society. The election of the Managing Committee of the said Society is to be held on 31/03/2007. The Respondent No.2 who is the Administrator had published the election programme and the date for acceptance of the nominations was between

23/02/2007 and 03/03/2007. The scrutiny of the nomination papers was to be done on 04/03/2007 and declaration of the list of valid candidates was also to be made on 04/03/2007. The date for withdrawal of the nomination was between 19/03/2007 and 21/03/2007 and the date for declaration of the final list of valid candidates was 21/03/2007. Though, normally, there is no provision for allotment of symbols for election of Managing Committee of a Co-operative Housing Society, yet, the Returning Officer, with the consent of all the contesting candidates, decided to allot the symbols to the candidates out of the list of 72 symbols. Accordingly, each candidate was required to submit a choice of symbol which was to be given in writing to the Returning Officer by 01/03/2007. A notice to that effect was already displayed and it was also mentioned therein that on 21/03/2007 the symbol which is allotted to each candidate would be published. At the bottom of the said notice, there was a note which stated that apart from the symbols which were mentioned in the said notice if any of the candidates wishes to select any other symbol which is not a political or religious symbol, he would be entitled to ask for allotment of such

symbol not mentioned in the list. Accordingly, each candidate gave in writing the choice of symbol and also gave his options. On 21/03/2007, the Returning Officer displayed the list of symbols which were allotted to each candidate. Thereafter, the campaigning for election commenced from 22/03/2007. Some of the candidates, more particularly the candidates who have sought to intervene in this Petition filed their objection, firstly, on the ground that they had not noticed the note which was given at the bottom of the notice which was published in respect of the allotment of symbols and, secondly, it was contended in their objection that the Petitioners and others who formed the Panel were allotted the symbol of flowers. It was submitted that this would give unfair advantage to Petitioners and others since they could campaign that their Panel consists of candidates to whom different flowers were allotted as symbol. The grievance of the intervners is that if they had known that they could also ask for similar symbol for their Panel, they could have made that request to the Returning Officer and since that was not done, they had demanded that the meeting be called for allotment of different symbol to them in the meeting which

was to be held on 26/03/2007.

11. After having heard the learned Counsel appearing on behalf of Petitioners, Respondent Nos. 1 and 4, Respondent No. 3 and the interveners, I am of the view that the Respondent No.2 is now not entitled to change the symbols which were already allotted to the candidates since the election is to be held on 31/3/2007. Though there is no rule which prescribes that symbols should be allotted to the candidates, the Returning Officer allotted the symbols for the benefit of voters who are essentially illiterate and are slum dwellers and, therefore, he felt that they would be in a better position to identify the candidate of their choice if a symbol was allotted. However, having once allotted the symbols and the election process having been started, the Returning Officer, in my view, cannot now change the symbol on a complaint of some candidates as it would seriously affect the campaign which is commenced from 22/03/2007 and, as a result, the entire process of election would be vitiated. In my view, therefore, the Respondent No.2 now cannot make any changes in the symbols after election process has started. If

any candidate is aggrieved by the said order, it is always open for him to file election petition and raise all the contentions in the election petition. It is well settled position in law that once the election process is started, the Court should not interfere and delay the process of election in any manner. The grievance made by Petitioners, therefore, is justified and Respondent No.1 is restrained from changing the symbols once allotted to Petitioners and other candidates and to conduct the election without changing the election programme which was declared on 20/02/2007.

12. Writ Petition is allowed in the above terms. Rule is made absolute accordingly in the above terms.

(V.M. KANADE, J.)